POINT I

The prevailing wage claim need not be served on the Village; it only initiates an investigation.

Petitioner's reply brief at page 4 thereof states:

> "(3) The intervenors' brief states (p. 2):
>
> "There is no requirement that service of such a claim be also made on the Village."

The brief is wholly mistaken. Section 220(8) of the New York Labor Law specifically requires that "before proceeding under complaint" the Industrial Commissioner "shall give notice" of a hearing, "together with a copy of such complaint", "which notice shall be served personally or by mail on any person or corporation affected thereby".

It is clear that petitioner wants this Court to believe that the statute requires the "prevailing wage complaint" to be served on the Village.

The statute, section 220(8) New York Labor Law, in fact reads:

> "Before proceeding under a complaint presented as provided in subdivision seven, or before making any order or determination upon an investigation made upon his own initiative, the fiscal officer shall order a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a copy of such complaint or the purpose thereof, or a statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on any person or corporation affected thereby;"

The petitioner improperly excerpted only a portion of the statute seeking to lead the Court to believe that the prevailing wage complaint *must* be served on the Village.

It is clear, however, that when the Industrial Commissioner is to start his hearings he serves a notice of the hearing on the Village together with either (1) a copy of the complaint *or* (2) a statement of the purpose of the hearing *or* a statement of the facts disclosed on such investigation. A simply statement of the purpose of the hearing is sufficient.

Thus there is no requirement that when the claim is served on the Industrial Commissioner it must then also be served on the Village. It is only when notice of the hearing is sent that the Village should be advised of the purpose of the hearing. There is no requirement that a copy of the complaint also *must* be served.

Unfortunately this partial misleading quotation of petitioner was not made in error. The same partial quotation was made in the New York Court of Appeals necessitating the same last minute reply as here.

In conclusion, as stated before, the prevailing rate complaint is not in the nature of a suit against the Village but a request that the State Industrial Commissioner institute an investigation to determine whether "prevailing wages" were paid. In fact, as indicated, the Village did pay more than prevailing wages for auto mechanics for many of the years in review.

In context of the Constitutional question, the Village had notice, an opportunity to be heard and to present its own evidence, and the procedures were not arbitrary or unfair.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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